

VERMONT LABOR RELATIONS BOARD

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| HEALTH DEPARTMENT |) | |
| PERSONNEL DESIGNATION DISPUTE |) | DOCKET NO. 81-61 |
| (re: Supervisory Chemist, |) | |
| Toxicology) |) | |

FINDINGS OF FACT, OPINION AND ORDER

Statement of Case

On October 9, 1981, Theodore Manazir, Supervisory Chemist, Toxicology, Health Department, filed a Notice of Dispute with the Vermont Labor Relations Board. Manazir contended the designation of his position as "non-management" by the Commissioner of Personnel should be changed to "supervisory".

A hearing was held before the full Board May 6, 1982, at the Board hearing room in Montpelier. Manazir appeared pro se. The State was represented by Assistant Attorney General Scott Cameron. No briefs were filed by the parties.

FINDINGS OF FACT

1. Theodore Manazir works in the Chemistry Division of the Health Department laboratory. The Chemistry Division has eight permanent employees, and is headed by a Chief Chemist. The Chemistry Division is divided into three sections: Toxicology, Occupational Health, and Drinking Water. Each section has an individual heading it. Manazir is a Supervisory Chemist, Toxicology (Position Number HE-56). He heads the Toxicology section, which, among other things, does alcohol breath test analysis as part of the State's alcohol impaired driver law enforcement program. Manazir is supervised by the Chief Chemist.

2. Manazir has one employee under his direct supervision, a Chemist A (Position Number HE-129), whose work he directs. Manazir does not have the final say in hiring this person, but would participate in the selection process. Manazir has the authority to take disciplinary action against this employee, and can adjust his/her grievances.

3. The Chemistry Division has devised an intra-rotational schedule, whereby its three Chemist A's and one Microbiologist A work not only in their assigned section under the head of that section (i.e. Toxicology, Occupational Health, or Drinking Water), but are also temporarily assigned to other sections on a rotating basis. This is to give the employees a variety of experiences.

4. When employees of the Occupational Health and Drinking Water sections are temporarily assigned to his section, Manazir assigns duties to them and oversees their work. In general, this supervisory work is routine as the employees are professionals who, once trained, can fulfill the technical and analytical aspects of their work with only general supervision. Manazir does not conduct performance evaluations on these employees, but is consulted when their direct supervisors prepare annual ratings.

5. Manazir spends approximately half his time overseeing the work of those assigned to him.

OPINION

Theodore Manazir contends his job duties as Supervisory Chemist, Toxicology, make him a "supervisory" employee. He contests the designation of his position by the Commissioner of Personnel as "non-management".

"Supervisory employee" is defined in 3 VSA §902(16) as:

An individual finally determined by the Board as having authority in the interest of the employer to hire, transfer, suspend, layoff, recall, promote, discharge, assign, reward or discipline other employees or responsibility to direct them or to adjust their grievances, or effectively to recommend such action, if in connection with the foregoing the exercise of such authority is not of a merely routine or clerical nature but requires the use of independent judgment.

In order to be considered a supervisor, an employee must pass two tests: 1) the possession of any one of the listed powers in the statutory definition; and 2) the exercise of such powers "not of a merely routine or clerical nature but requiring the use of independent judgment".

Vermont State Hospital Personnel Designation Disputes, 5 VLRB 60 (1982).
cf. Firefighters of Brattleboro, Local 2628 v. Brattleboro Fire Department, Town of Brattleboro, 138 Vt. 347 (1980).

It is apparent Manazir has supervisory authority over the Chemist A assigned to his Toxicology section. However, supervisory authority over one employee does not meet the statutory definition. The statutory language is in the plural, requiring supervisory authority over employees for an individual to be considered a supervisor.

Manazir does assign duties and oversees the work of other employees when they are temporarily assigned to his section due to the intra-rotational schedule in effect in the laboratory. Whether this responsibility is "not of a merely routine or clerical nature but requiring the use of independent judgment", and thus meets the statutory definition is a "judgment call". Brattleboro, supra. It is our judgment the exercise of such authority is routine, since the employees temporarily assigned are professionals who, once trained, can fulfill the technical and analytical

aspects of their work with only general supervision. It is apparent Manazir simply assigns work pursuant to established procedures and checks its accuracy; he does not exercise independent judgment in this regard.

We conclude the intra-rotational schedule at the laboratory does not change operations to the extent Manazir exercises supervisory authority over employees temporarily assigned to his section. Those employees are responsible to their direct supervisors. Accordingly, we find Manazir does not meet the statutory definition of a supervisor.

ORDER

Now, therefore, based on the foregoing findings of fact and for all the foregoing reasons, it is hereby ORDERED:

The designation of the Commissioner of Personnel making Theodore Manazir, Supervisory Chemist, Toxicology, in the Health Department a Non-Management employee is AFFIRMED.

Dated this 3rd day of June, 1982, at Montpelier, Vermont.

VERMONT LABOR RELATIONS BOARD

Kimberly B. Cheney
Kimberly B. Cheney, Chairman

William G. Kemsley, Sr.
William G. Kemsley, Sr.

James S. Gilson
James S. Gilson

Appealed to DEC.
Appeal Dismissed
4/83
by Ship.